

NOV 02 2016

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED	DOCKETED	DATE	INITIAL

CASE NO. 16-16816

IN RE: CARRIER IQ, CONSUMER PRIVACY LITIGATION,
PATRICK KENNY, individually and on behalf of himself and all others similarly
situated,

Plaintiff-Appellee,

v.

SAM A. MIORELLI,

Objector-Appellant,

v.

CARRIER IQ, INC., ET AL.

Defendants-Appellees.

NOTICE OF DISTRICT COURT RULING ON FRAP 4(a)(4) MOTION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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NOTICE OF DISTRICT COURT RULING ON FRAP 4(a)(4) MOTION

In compliance with the Court's Order dated October 17, 2016 related to the then-pending September 20, 2016 motion before the District Court, Objector-Appellant Miorelli hereby files this notice of the District Court's ruling on the at-issue motion on October 19, 2016. Such order is attached hereto as Exhibit A.

Objector-Appellant Miorelli hereby advises the Court that he intends to prosecute the instant appeal.

Dated: November 1, 2016



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U.S. COURT OF APPEALS

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CERTIFICATE OF SERVICE

FILED _____
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DATE _____ INITIAL _____

I hereby certify that on November 1, 2016, I transmitted the foregoing along with its exhibit to the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit via FedEx Express Overnight Delivery. By permission, I served the following via e-mail: (a) Eric J. O'Bell (cjo@obcllawfirm.com) and (b) Burton Rosenblatt (burt@cburlaw.com and cvimullenix@cburlaw.com). Additionally, I have caused copies to be served to the following via U.S. First Class Mail:

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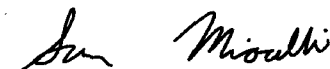
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Dated: November 1, 2016

A handwritten signature in cursive script, appearing to read "Sam Miorelli", written over a horizontal line.

Sam A. Miorelli, E.I., Esq. (pro se)

**EXHIBIT A – ORDER GRANTING IN PART AND DENYING IN PART
OBJECTOR SINGER’S MOTION TO ALTER OR AMEND JUDGMENT
(DKT 486 – OCTOBER 19, 2016)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE

Case No. 12-md-02330-EMC

CARRIER IQ, INC., CONSUMER
PRIVACY LITIGATION.

**ORDER GRANTING IN PART AND
DENYING IN PART OBJECTOR
SINGER'S MOTION TO ALTER OR
AMEND JUDGMENT**

Docket No. 486

Objector Sandra Singer has filed a motion to alter or amend the judgment. More specifically, Ms. Singer seeks the following relief: (1) an order awarding her the same relief awarded to other class members who submitted valid claims (approximately \$140); (2) an order striking certain filings made by Plaintiffs' counsel (*i.e.*, Docket Nos. 464 and 469, which include two declarations from Mr. Warshaw); (3) an order awarding her compensation based on the value of her objections; and (4) an order awarding her compensatory and punitive damages based on alleged improper conduct by Plaintiffs' counsel.¹

The Court has reviewed the papers submitted, as well as all other papers previously submitted by Ms. Singer and by Plaintiffs with respect to Ms. Singer's claim. The Court finds no merit to Ms. Singer's requests for relief (2)-(4) above, and therefore denies those requests for

¹ Ms. Singer also asked the Court to order the Clerk of the Court to file her "second supplemental opposition," a copy of which was faxed and e-mailed to the Court. Contrary to what Ms. Singer suggests, filing by fax is not permitted by the Civil Local Rules. Civil Local Rule 5-3(a) simply allows a party to file a fax copy of an original document. *See also* Civ. L.R. 5-3(b) (providing that "[t]he fax copy is *not* transmitted directly to the Clerk by electronic or telephonic means") (emphasis in original). However, as a courtesy, the Court has in the past filed papers submitted by Ms. Singer through e-mail, and the Court shall extend this courtesy again for the "second supplemental opposition." The Court notes that it did review the "second supplemental opposition" prior to the final approval hearing even though it was not formally docketed at that time. Plaintiffs' request that Ms. Singer's various papers be stricken, *see* Opp'n at 10, is denied.

1 relief. The only issue remaining is whether Ms. Singer should be given the same relief as other
2 class members who submitted valid claims (approximately \$140).

3 In its order, the Court found that Ms. Singer had submitted an invalid claim because she
4 did not provide, in her claim form, a genuine cell phone number. *See* Docket No. 481 (Order at
5 7); Docket No. 469 (Warshaw Decl. ¶ 7) (noting that Ms. Singer provided a cell phone number of
6 all 1's). However, Ms. Singer asserts that, after her objection to the settlement was filed, *see*
7 Docket Nos. 453-54 (objections), Plaintiffs contacted her and asked for proof that she was a class
8 member with standing to object, including but not limited to her real cell phone number. Ms.
9 Singer provided Plaintiffs with her real cell phone number. *See* Docket No. 467-1 (Obj. at 5-6);
10 Docket No. 469 (Warshaw Decl. ¶¶ 8-9). Ms. Singer takes the position that Plaintiffs' actions
11 gave her the impression that, once she gave her real cell phone number, her claim would be
12 considered on the merits. *See, e.g.,* Docket No. 467-1 (Obj. at 6) (claiming that Plaintiffs "implied
13 that if she did not provide [her real cell phone number] she would not receive any money").

14 As an initial matter, Plaintiffs argue that the Court should not entertain this specific request
15 for relief (or for that matter, any of Ms. Singer's requests for relief) because Ms. Singer does not
16 have standing to bring a motion to alter or amend the judgment under Federal Rule of Civil
17 Procedure 59(e). The Court is not persuaded. On its face, Rule 59(e) simply states: "A motion to
18 alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."
19 Fed. R. Civ. P. 59(e). Nothing in the rule provides that such a motion may be brought by a party
20 only. Moreover, nothing about Rule 23, which governs class certification, suggests that an
21 objector to a proposed class action settlement should not be allowed to ask for reconsideration of a
22 ruling on an objection.

23 The authority cited by Plaintiffs, *see Pedraza v. United Guar. Corp.*, No. CV199-239,
24 2001 U.S. Dist. LEXIS 27165 (S.D. Ga. Sep. 19, 2001), is not binding on this Court. Moreover,
25 the *Pedraza* court was confronted with an objector's request for a new trial *or* an amendment of
26 the judgment. The court seemed to focus more on the request for a new trial, noting that Rule 59,
27 by its terms, specified that a new trial may be granted to a *party*, not an objector. *See id.* at *9
28 ("Rule 59 states that '[a] new trial may be granted to all or any of the *parties* . . .') (emphasis in

original). The court failed to address the fact that Rule 59(e), which governs alteration or amendment of a judgment, does not contain similar limiting language. Furthermore, the *Pedraza* court justified its holding that “unnamed class members lack standing to bring a Rule 59 motion” because “unnamed class members, who have not intervened, lack standing to appeal a final judgment.” *Id.* at *10. But, as Plaintiffs themselves concede, it is no longer good law that an objector lacks standing to appeal a final judgment. *See* Opp’n at 4 n.4.

Plaintiffs argue that, even if Ms. Singer has standing to seek reconsideration, she may do so only on limited grounds which are inapplicable here. Again, the Court is not persuaded. The Ninth Circuit has noted as follows with respect to Rule 59(e) motions:

“Since specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion.” But amending a judgment after its entry remains “an extraordinary remedy which should be used sparingly.” In general, there are four basic grounds upon which a Rule 59(e) motion may be granted: (1) if such motion is necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if such motion is necessary to present newly discovered or previously unavailable evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the amendment is justified by an intervening change in controlling law.

Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011).

In the instant case, Ms. Singer has provided a sufficient basis to support manifest injustice. That is, when Plaintiffs asked for her real cell phone number, this could reasonably have led Ms. Singer to believe that providing the real number would cure the deficiency in her original claim form and allow her to participate in the settlement. This would be true even if Ms. Singer is, in fact, an attorney or former attorney (although the Court notes that Plaintiffs’ evidence in support of their claim that Ms. Singer is an attorney or former attorney is thin).²

Accordingly, the Court grants Ms. Singer limited relief. That is, the Court hereby orders Plaintiffs to investigate (either directly or through the settlement administrator) whether, based on

² *See, e.g.*, Docket No. 464-1 (Warshaw Decl., Ex. A) (appellate brief submitted by Ms. Singer to the First Circuit in which she uses the abbreviation “Esq.” after her name). Plaintiffs have not pointed the Court to any bar number affiliated with Ms. Singer. Notably, in one of their papers, Plaintiffs even stated that Ms. Singer “holds herself out as an attorney,” Docket No. 464 (Resp. at 2) (emphasis added), in implicit recognition of the fact that she may not be an attorney.

1 the real cell phone number provided by Ms. Singer, Ms. Singer is a member of the class. If so,
2 then Ms. Singer should be awarded the same relief as all other claiming class members (*i.e.*,
3 approximately \$140). Plaintiffs shall make this determination within two weeks of the date of this
4 order. By the same date, Plaintiffs shall file a supplemental brief reporting back on the results of
5 their investigation.

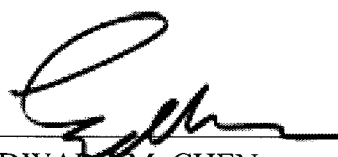
6 The Court notes that, if Ms. Singer is entitled to relief, Plaintiffs and/or the settlement
7 administrator will likely need to recalculate the exact award for each claiming class member
8 (including Ms. Singer). Recalculation, however, is still possible because it appears that no
9 distribution has been made to claiming class members as of yet, *i.e.*, because appeals have been
10 taken by two other objectors. *See* Docket No. 419 (Am. Stip. of Sett. ¶¶ 2(s), 26) (providing that
11 (1) the effective date of the settlement is, “if an appeal is filed, the latest of (i) the date of final
12 affirmance of that Order of Final Approval . . . or (iii) the date of final dismissal of any appeal
13 from the Order of Final Approval” and that (2) “[t]he monetary relief . . . shall be made available
14 to eligible and qualifying Class Members after the Effective Date of this Agreement”). Because of
15 the appeals, no actual distribution shall be made to any class member at this point in the
16 proceedings.

17 Accordingly, the Court grants in part and denies in part Ms. Singer’s motion to alter or
18 amend the judgment. Ms. Singer is granted relief only to the extent Plaintiffs are ordered to
19 investigate whether she is in fact a member of the class (*i.e.*, based on her real cell phone number);
20 if she is, she is entitled to relief as a member of the class.

21 This order disposes of Docket No. 486.

22
23 **IT IS SO ORDERED.**

24
25 Dated: October 19, 2016

26
27 
28 EDWARD M. CHEN
United States District Judge